

## CHAPTER TWELVE

### FINANCIAL SERVICES

#### Article 12.01: Definitions

For purposes of this Chapter:

**Appointing Authority** means the Secretary-General, Deputy Secretary-General or next senior member of the staff of the International Centre for Settlement of Investment Disputes who is not a national of either Party;

**banking and other financial service (excluding insurance)** means:

- (a) acceptance of deposits and other repayable funds from the public;
- (b) lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transactions;
- (c) financial leasing;
- (d) all payment and money transmission services, including credit, charge and debit cards, travellers cheques, and bankers drafts;
- (e) guarantees and commitments;
- (f) trading for own account or for account of customers, whether on an exchange, in an over-the-counter market, or otherwise, the following:
  - (i) money market instruments (including cheques, bills, certificates of deposit),
  - (ii) foreign exchange,

- (iii) derivative products, including futures and options,
- (iv) exchange rate and interest rate instruments, including products such as swaps and forward rate agreements,
- (v) transferable securities, or
- (vi) other negotiable instruments and financial assets, including bullion;
- (g) participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;
- (h) money broking;
- (i) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;
- (j) settlement and clearing services for financial assets, including securities, derivative products and other negotiable instruments;
- (k) provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services; and
- (l) advisory, intermediation, and other auxiliary financial services on all the activities listed in subparagraphs (a) through (k), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy;

**cross-border financial service supplier of a Party** means a person of a Party that is engaged in the business of supplying a financial service within the territory of the Party and that seeks to supply or supplies a financial service through the cross-border trade in that service;

**cross-border trade in financial services** or **cross-border supply of financial services** means the supply of a financial service:

- (a) from the territory of a Party into the territory of the other Party;
- (b) in the territory of a Party by a person of that Party to a person of the other Party; or
- (c) by a national of a Party in the territory of the other Party, but does not include the supply of a service in the territory of a Party by an investment in that territory;

**financial institution** means a financial intermediary or other enterprise that is authorized to do business and regulated or supervised as a financial institution under the domestic law of the Party in whose territory it is located;

**financial institution of the other Party** means a financial institution, including a branch, located in the territory of a Party that is controlled by a person of the other Party;

**financial service** means a service of a financial nature, including an insurance or insurance-related service, a banking or other financial service (excluding insurance), or a service incidental or auxiliary to a service of a financial nature;

**financial service supplier of a Party** means a person of a Party that is engaged in the business of supplying a financial service within the territory of that Party;

**insurance and insurance-related service** means:

- (a) direct insurance (including co-insurance):
  - (i) life, or
  - (ii) non-life;

- (b) reinsurance and retrocession;
- (c) insurance intermediation, such as brokerage and agency; or
- (d) service auxiliary to insurance, such as consultancy, actuarial, risk assessment, and claim settlement services;

**investment** means “investment” as defined in Article 9.01 (Investment – Definitions), except that:

- (a) a loan to a financial institution and a bond, debenture and other debt instrument referred to in paragraph (c) of that definition (a “debt instrument”) is an investment only where it is treated as regulatory capital by the Party in whose territory the financial institution is located; and
- (b) a loan granted by a financial institution or debt instrument owned by a financial institution is not an investment unless it is covered by subparagraph (a); and

for greater certainty:

- (c) a loan to, or debt security issued by, a Party or a state enterprise of that Party is not an investment; and
- (d) a loan granted by or debt instrument owned by a cross-border financial service supplier, other than a loan to or debt instrument issued by a financial institution, is an investment if such loan or debt instrument meets the criteria for investments set out in Article 9.01 (Investment - Definitions);

**investor of a Party** means “investor of a Party” as defined in Article 9.01 (Investment – Definitions);

**new financial service** means a financial service not supplied in the Party’s territory that is supplied within the territory of the other Party, and includes a new form of delivery of a financial service or the sale of a financial product that is not sold in the Party’s territory;

**person of a Party** means “person of a Party” as defined in Article 1.01 (Initial Provisions and General Definitions – Definitions of General Application) and, for greater certainty, does not include a branch of an enterprise of a non-Party;

**prudential reasons** includes the maintenance of the safety, soundness, integrity, or financial responsibility of individual institutions or cross-border financial service suppliers;

**public entity** means a central bank or monetary authority of a Party, or a financial institution owned or controlled by a Party; and

**self-regulatory organization** means a non-governmental body that exercises its own or delegated regulatory or supervisory authority over financial service suppliers or financial institutions, including a securities or futures exchange or market, clearing agency, or other organization or association.

#### **Article 12.02: Scope of Application**

1. This Chapter applies to a measure adopted or maintained by a Party relating to:
  - (a) a financial institution of the other Party;
  - (b) an investor of the other Party or an investment of that investor, in a financial institution in the Party’s territory; and
  - (c) cross-border trade in financial services.

2. Chapters Nine (Investment) and Ten (Cross-Border Trade in Services) apply to measures described in paragraph 1 only to the extent that those Chapters are incorporated into this Chapter.

3. Articles 9.10 (Investment – Transfers), 9.11 (Investment – Expropriation), 9.15 (Investment – Denial of Benefits), 9.16 (Investment – Health, Safety and Environmental Measures), 9.18 (Investment– Special Formalities and Information Requirements) and 10.10 (Cross-Border Trade in Services – Denial of Benefits) are incorporated into and made a part of this Chapter.

4. Section C of Chapter Nine (Investment – Settlement of Disputes between an Investor and the Host Party) is incorporated into and made a part of this Chapter solely for claims that a Party has breached Articles 9.10 (Investment – Transfers), 9.11 (Investment – Expropriation), or 9.15 (Investment – Denial of Benefits) as incorporated into this Chapter, or claims pursuant to Article 9.20(c) (Investment – Claim by an Investor of a Party on Its Own Behalf) or Article 9.21(1)(c) (Investment – Claim by an Investor of a Party on Behalf of an Enterprise).

5. Article 10.11 (Cross-Border Trade in Services – Transfers and Payments) is incorporated into and made a part of this Chapter to the extent that cross-border trade in financial services is subject to obligations pursuant to Article 12.06.

6. This Chapter does not prevent a Party, including its public entities from exclusively conducting or providing in its territory:

- (a) activities or services forming part of a public retirement plan or statutory system of social security; or
- (b) activities or services for the account or with the guarantee or using the financial resources of the Party or its public entities.

### **Article 12.03: National Treatment**

1. Each Party shall accord to an investor of the other Party treatment no less favourable than that it accords to its own investors in like circumstances with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of financial institutions or an investment in financial institutions in its territory.
2. Each Party shall accord to a financial institution of the other Party and to an investment of an investor of the other Party in a financial institution treatment no less favourable than that it accords to its own financial institutions and to investments of its own investors in financial institutions, in like circumstances, with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of financial institutions and investments.
3. For purposes of the national treatment obligations in Article 12.06(1), a Party shall accord to a cross-border financial service supplier of the other Party treatment no less favourable than that it accords to its own financial service suppliers, in like circumstances, with respect to the supply of the relevant service.
4. The treatment that a Party is required to accord under paragraphs 1, 2 and 3 means, with respect to measures adopted or maintained by a sub-national government, treatment no less favourable than the most favourable treatment accorded, in like circumstances, by that sub-national government to investors in financial institutions, financial institutions, investments of investors in financial institutions and financial service providers of the Party of which it forms a part.
5. Differences in market share, profitability or size do not in themselves establish a breach of the obligations under this Article.

#### **Article 12.04: Most-Favoured-Nation Treatment**

1. Each Party shall accord to an investor of the other Party, a financial institution of the other Party, an investment of an investor in a financial institution and a cross-border financial service supplier of the other Party treatment no less favourable than that it accords to the investors, financial institutions, investments of investors in financial institutions and cross-border financial service suppliers of a non-Party, in like circumstances.

2. A Party may recognize a prudential measure of a non-Party in the application of a measure covered by this Chapter. Such recognition may be:

- (a) accorded unilaterally;
- (b) achieved through harmonization or other means; or
- (c) based upon an agreement or arrangement with the non-Party.

3. A Party according recognition of a prudential measure under paragraph 2 shall provide adequate opportunity to the other Party to demonstrate that circumstances exist in which there are or will be equivalent regulation, oversight, implementation of regulation, and, if appropriate, procedures concerning the sharing of information between the Parties.

4. If a Party accords recognition of prudential measures under subparagraph 2(c) and the circumstances set out in paragraph 3 exist, the Party shall provide adequate opportunity to the other Party to negotiate accession to the agreement or arrangement, or to negotiate a comparable agreement or arrangement.

## **Article 12.05: Right of Establishment**

1. A Party shall permit an investor of the other Party that does not own or control a financial institution in the Party's territory to establish, without the imposition of numerical restrictions or requirements to take a specific juridical form, a financial institution that is permitted to supply a financial service that a like institution of the Party may supply under the domestic law of the Party at the time of establishment. The obligation not to impose a requirement to take a specific juridical form does not prevent a Party from imposing a condition or requirement in connection with the establishment of a particular type of entity chosen by an investor of the other Party.
2. A Party shall permit an investor of the other Party that owns or controls a financial institution in the Party's territory to establish in that territory such additional financial institutions as may be necessary for the supply of the full range of financial services allowed under the domestic law of the Party at the time of establishment of the additional financial institutions. Subject to Article 12.03, a Party may impose a term or condition on the establishment of additional financial institutions and determine the institutional and juridical form to be used to supply a specified financial service or to carry out of a specified activity.
3. The right of establishment under paragraphs 1 and 2 includes the acquisition of an existing entity.
4. Subject to Article 12.03, a Party may prohibit a particular financial service or activity. Such a prohibition may not apply to all financial services or to a complete financial services sub-sector such as banking.
5. For the purpose of this Article, without prejudice to other forms of prudential regulation, a Party may require that an investor of the other Party be engaged in the business of providing financial services in the territory of that other Party.
6. For the purpose of this Article, "numerical restrictions" means limitations imposed either on the basis of a regional subdivision or on the basis of the entire territory of a Party, on the number of financial institutions whether in the form of a numerical quota, a monopoly, an exclusive service supplier or the requirements of an economic needs test.

### **Article 12.06: Cross-Border Trade**

1. Each Party shall permit, under terms and conditions that accord national treatment, a cross-border financial service supplier of the other Party to supply a financial service specified in Annex 12.06.
2. Each Party shall permit a person located in its territory, and its nationals wherever located, to purchase a financial service from a cross-border financial service supplier of the other Party located in the territory of the other Party. Subject to paragraph 1, this obligation does not require a Party to permit that supplier to do business or solicit in its territory. Each Party may define “doing business” and “solicitation” for the purposes of this Article.
3. Without prejudice to other means of prudential regulation of cross-border trade in financial services, a Party may require the registration of cross-border financial service suppliers of the other Party and of financial instruments.

### **Article 12.07: New Financial Services**

1. A Party shall permit a financial institution of the other Party to supply a new financial service that the first Party would permit its own financial institutions, in like circumstances, to supply under its domestic law. A Party may:
  - (a) require the financial institution to request permission or notify the relevant regulator in order to obtain that permission; and
  - (b) refuse to grant permission if the introduction of the financial service would require the Party to adopt or amend statutes.

2. A Party may determine the institutional and juridical form through which the new financial service may be supplied and may require authorization for the supply of the service. Where a Party would permit the new financial service and authorization is required, the decision shall be made within a reasonable time and authorization may only be refused for prudential reasons.

3. This Article does not prevent a financial institution of a Party from applying to the other Party to consider authorizing the supply of a financial service that is not supplied within either Party's territory. That application is subject to the domestic law of the Party receiving the application and is not subject to the obligations of this Article.

#### **Article 12.08: Treatment of Certain Information**

This Chapter does not require a Party to furnish or allow access to:

- (a) information related to the financial affairs and accounts of an individual customer of a financial institution or a cross-border financial service supplier; or
- (b) confidential information which if disclosed would impede law enforcement or otherwise be contrary to the public interest or prejudice legitimate commercial interests of a particular enterprise.

#### **Article 12.09: Senior Management and Boards of Directors**

1. A Party may not require a financial institution of the other Party to engage natural persons of any particular nationality as senior managerial or other essential personnel.

2. A Party may not require that more than a simple majority of the board of directors of a financial institution of the other Party be composed of nationals of the Party or natural persons residing in the territory of the Party.

## **Article 12.10: Non-Conforming Measures**

1. Articles 12.03, 12.04, 12.05 and 12.09 do not apply to:
  - (a) an existing non-conforming measure maintained by:
    - (i) the national government of a Party, as set out in Section I of its Schedule to Annex III, or
    - (ii) a sub-national government of a Party;
  - (b) the continuation or prompt renewal of a non-conforming measure referred to in subparagraph (a); or
  - (c) an amendment to a non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 12.03, 12.04, 12.05 and 12.09.
  
2. Article 12.06 does not apply to:
  - (a) an existing non-conforming measure that is maintained by:
    - (i) the national government of a Party, as set out in Section I of its Schedule to Annex III, or
    - (ii) a sub-national government of a Party;
  - (b) the continuation or prompt renewal of a non-conforming measure referred to in subparagraph (a); or
  - (c) an amendment to a non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed upon the entry into force of this Agreement, with Article 12.06.

3. Articles 12.03, 12.04, 12.05, 12.06 and 12.09 do not apply to a non-conforming measure that a Party adopts or maintains in accordance with Section II of its Schedule to Annex III.

4. Section III of each Party's Schedule to Annex III sets out specific commitments by that Party. These commitments are subject to a Party's right to apply a non-conforming measure adopted or maintained in accordance with Section II of its Schedule to Annex III.

5. Where a Party has set out a reservation to Article 9.04 (Investment – National Treatment), 9.05 (Investment – Most-Favoured-Nation Treatment), 10.03 (Cross-Border Trade in Services – National Treatment) or 10.04 (Cross-Border Trade in Services – Most-Favoured-Nation Treatment) in its Schedule to Annex I or II, the reservation also constitutes a reservation to Article 12.03 or 12.04 to the extent that the measure, sector, sub-sector or activity set out in the reservation is covered by this Chapter.

#### **Article 12.11: Exceptions**

1. This Chapter or Chapter Nine (Investment), Ten (Cross-Border Trade in Services), Eleven (Telecommunications), Thirteen (Temporary Entry for Business Persons), Fourteen (Competition Policy, Monopolies and State Enterprises), or Fifteen (Electronic Commerce) do not prevent a Party from adopting or maintaining a measure for prudential reasons, including for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a financial institution or cross-border financial service supplier, or to ensure the integrity and stability of the financial system. Where these measures do not conform with the provisions of this Agreement referred to in this paragraph, they shall not be used as a means of avoiding the Party's obligations under those provisions.

2. This Chapter or Chapter Nine (Investment), Ten (Cross-Border Trade in Services), Eleven (Telecommunications), Thirteen (Temporary Entry for Business Persons), Fourteen (Competition Policy, Monopolies and State Enterprises), or Fifteen (Electronic Commerce) does not apply to non-discriminatory measures of general application taken by any public entity in pursuit of monetary and related credit policies or exchange rate policies. This paragraph does not affect a Party's obligations under Article 9.07 (Investment – Performance Requirements) with respect to measures covered by Chapter Nine (Investment) or Article 9.10 (Investment – Transfers) or 10.11 (Cross-Border Trade in Services – Transfers and Payments).

3. Notwithstanding Article 9.10 (Investment – Transfers) and 10.11 (Cross-Border Trade in Services – Transfers and Payments) a Party may prevent or limit transfers by a financial institution or cross-border financial service supplier to, or for the benefit of, an affiliate of or person related to such institution or supplier, through the equitable, non-discriminatory and good-faith application of measures relating to maintenance of the safety, soundness, integrity or financial responsibility of financial institutions or cross-border financial service suppliers.

4. A Party may adopt or enforce a measure necessary to secure compliance with its laws or regulations that is not inconsistent with this Chapter, including a measure relating to the prevention of deceptive and fraudulent practices or to deal with the effects of a default on financial services contracts. A Party may not apply that measure in a manner that would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on investment in a financial institution or on a cross-border trade in financial services.

## **Article 12.12: Transparency**

1. The Parties recognize that transparent regulations and policies governing the activities of financial institutions and financial service suppliers are important in facilitating access of financial institutions and financial service suppliers to, and their operations in, each other's markets. Each Party commits to promoting regulatory transparency in financial services.
2. Each Party shall ensure that a measure of general application to which this Chapter applies is administered in a reasonable, objective and impartial manner.
3. Article 20.02 (Transparency – Publication) does not apply to a regulation of general application that a Party proposes to adopt where that proposed regulation relates to the subject matter of this Chapter. For that regulation each Party shall, to the extent practicable:
  - (a) publish that proposed regulation in advance;
  - (b) provide interested persons and the other Party a reasonable opportunity to comment on that proposed regulation; and
  - (c) allow a reasonable period of time to elapse between final publication of the regulation and its effective date.
4. Each Party shall ensure that its regulatory authorities make available to interested persons their requirements, including any documentation required, for completing applications relating to the supply of a financial service.
5. On the request of an applicant, a regulatory authority shall inform the applicant of the status of its application. If that authority requires additional information from the applicant, it shall promptly notify the applicant.

6. A regulatory authority shall make an administrative decision on a completed application of an investor in a financial institution, cross-border financial service supplier or a financial institution of the other Party relating to the supply of a financial service within 120 days, and shall promptly notify the applicant of the decision. An application shall not be considered complete until all relevant hearings are held and all necessary information is received. Where it is not practicable for a decision to be made within 120 days, the regulatory authority shall promptly notify the applicant and shall endeavour to make the decision within a reasonable time.

7. Each Party shall adopt or maintain appropriate mechanisms that will promptly respond to inquiries from an interested person regarding a measure of general application covered by this Chapter.

#### **Article 12.13: Self-Regulatory Organizations**

If a Party requires a financial institution or a cross-border financial service supplier of the other Party to be a member of, participate in, or have access to, a self-regulatory organisation to provide a financial service in or into the territory of that Party then the requiring Party shall ensure that the self-regulatory organisation observes the obligations of this Chapter.

#### **Article 12.14: Payment and Clearing Systems**

Under terms and conditions that accord national treatment, each Party shall grant to a financial institution of the other Party established in its territory access to payment and clearing systems operated by an entity exercising governmental authority delegated to it by a Party as well as access to official funding and refinancing facilities available in the normal course of ordinary business. This Article does not confer access to the Party's lender of last resort facilities.

### **Article 12.15: Financial Services Committee**

1. The Parties establish a Financial Services Committee (the “Committee”). The principal representative of each Party shall be an official of the Party’s authority responsible for financial services set out in Annex 12.15.
2. The Committee shall:
  - (a) supervise the implementation of this Chapter and its further elaboration;
  - (b) consider issues regarding financial services that are referred to it by a Party; and
  - (c) participate in dispute settlement procedures under Article 12.17.
3. The Committee shall meet annually, or as it otherwise decides, to assess the functioning of this Agreement as it applies to financial services. The Committee shall inform the Commission of the results of each meeting.

### **Article 12.16: Consultations**

1. A Party may request consultations with the other Party regarding a matter arising under this Agreement that affects a financial service. The other Party shall give sympathetic consideration to the request. The Parties shall report the results of their consultations to the Committee.
2. Officials of the authorities specified in Annex 12.15 shall participate in the consultations under this Article.
3. A Party may request that regulatory authorities of the other Party participate in consultations under this Article regarding that other Party’s measures of general application which may affect the operations of financial institutions or cross-border financial service suppliers in the requesting Party’s territory.

4. A regulatory authority participating in consultations pursuant to paragraph 3 need not disclose information or take any action that would interfere with specific regulatory, supervisory, administrative or enforcement matters.

5. Where a Party requires information for a supervisory purpose concerning a financial institution in the other Party's territory or a cross-border financial service supplier in the other Party's territory, the Party may approach the competent regulatory authority in the other Party's territory to seek the information.

6. A Party is not required to derogate from its relevant domestic law regarding sharing of information among financial regulators or the requirements of an agreement or arrangement between financial authorities of the Parties.

#### **Article 12.17: Dispute Settlement**

1. The Provisions of Chapter Twenty-Two (Dispute Settlement), as modified by this Article, applies to the settlement of disputes arising under this Chapter.

2. Consultations held under Article 12.16 regarding a measure or matter constitute a consultation under Article 22.05 (Dispute Settlement – Consultation), unless the Parties otherwise decide. If the matter has not been resolved within 45 days of the beginning of consultations under Article 12.16 or 90 days of the delivery of the request for consultations under Article 12.16, whichever is earlier, the complaining Party may request in writing that a panel be established.

3. The following procedures replace Article 22.08 (Dispute Settlement – Panel Selection):

- (a) the panel shall be composed of three members;

- (b) each Party shall, within 30 days of receipt of the request for the establishment of the panel, appoint a panelist who may be a national of that Party and notify the other Party in writing of the appointment; if a Party fails to appoint a panelist within 30 days, the other Party may request the Appointing Authority to appoint, at its discretion the panelist not yet appointed, subject to paragraph 4;
- (c) the Parties shall endeavour to jointly appoint the third panelist who shall chair the panel; unless the Parties decide otherwise, this panelist shall not be a national of either Party; if the chair of the panel has not been appointed within 30 days of the most recent appointment under subparagraph (b), either Party may request that the Appointing Authority appoint at its discretion, subject to paragraph 4, the chair of the panel, who shall not be a national of either Party;
- (d) subparagraphs (b) and (c) apply where a panelist or the chair of the panel withdraws, is removed or becomes unable to serve on the panel. In such a case, the time periods applicable to the panel proceeding shall be suspended for a period beginning on the date a panelist ceases to serve and ending on the date the replacement is appointed.

4. Each panelist on panels constituted for disputes arising under this Chapter shall have the qualifications required by Article 22.09 (Dispute Settlement – Qualifications of Panelists) with the exception of Article 22.09(d). In addition, each panelist shall have expertise or experience in financial services law or practice, which may include the regulation of financial institutions.

5. If a panel finds that a measure is inconsistent with the obligations of this Agreement and the measure affects:

- (a) only the financial services sector, the complaining Party may suspend benefits only in the financial services sector;

- (b) the financial services sector and another sector, the complaining Party may suspend benefits in the financial services sector that have an effect equivalent to the effect of the measure in the Party's financial services sector; or
- (c) only a sector other than the financial services sector, the complaining Party may not suspend benefits in the financial services sector.

### **Article 12.18: Investment Disputes in Financial Services**

1. Where an investor of a Party submits a claim under Article 9.20 (Investment – Claim by an Investor of a Party on Its Own Behalf) or 9.21 (Investment – Claim by an Investor of a Party on Behalf of an Enterprise) to arbitration under Section C of Chapter 9 (Investment – Settlement of Disputes between an Investor and the Host Party) and the responding Party invokes an exception under Article 12.11, on request of the responding Party, the Tribunal shall refer the matter in writing to the Committee for a decision in accordance with paragraph 2. The Tribunal may not proceed pending receipt of a decision or report under this Article.
2. In a referral under paragraph 1, the Committee shall decide the issue of whether and to what extent Article 12.11 is a valid defence to the claim of the investor. The Committee shall transmit a copy of its decision to the Tribunal and to the Commission. The decision is binding on the Tribunal.
3. Where the Committee has not decided the issue within 60 days of the receipt of the referral under paragraph 1, either Party may within 10 days request that a panel be established under Article 22.07 (Dispute Settlement – Establishment of a Panel) to decide the issue. The panel shall be constituted in accordance with Article 12.17. The panel shall transmit its final report, established in accordance with Article 22.11 (Dispute Settlement – Panel Reports), to the Committee and to the Tribunal. The report is binding on the Tribunal.
4. Where a request for the establishment of a panel under paragraph 3 has not been made within 10 days of the expiration of the 60-day period referred to in paragraph 3, the Tribunal may proceed to decide the matter.

## **Annex 12.04**

### **Understanding Regarding Most-Favoured-Nation Treatment**

Without prejudice to a reservation to Article 12.04 taken by a Party under Article 12.10, regardless of Article 12.06, Article 12.04 applies to the supply by a cross-border financial service supplier of a financial service.

## **Annex 12.06**

### **Cross-Border Trade**

#### **Canada**

##### **Insurance and Insurance-Related Services**

1. For Canada, Article 12.06(1) applies to the supply of a financial service from the territory of one Party into the territory of the other Party with respect to:

- (a) insurance of risks relating to:
  - (i) maritime shipping, commercial aviation and space launching and freight, including satellites, with this insurance to cover: the goods being transported, the vehicle transporting the goods, or liability deriving from that transport, and
  - (ii) goods in international transit;
- (b) reinsurance and retrocession;
- (c) service auxiliary to insurance, such as consultancy, actuarial, risk assessment, and claim settlement services; and
- (d) insurance intermediation, such as brokerage and agency.

2. Paragraph 1 applies only if a Panamanian entity is not in itself or through an agent insuring a risk in Canada.

### **Banking and Other Financial Services (excluding insurance)**

3. For Canada, Article 12.06(1) applies to the supply of a financial service from the territory of one Party into the territory of the other Party with respect to:

- (a) the provision and transfer of financial information and financial data processing and related software by a supplier of another financial service, and
- (b) advisory and other auxiliary financial services as described in subparagraph (l) of the definition of “banking and other financial service (excluding insurance)”, but not intermediation as described in that subparagraph.

4. Paragraph 3 applies only if neither the foreign bank nor one of its affiliates, if subject to the *Bank Act*, maintains a financial establishment in Canada.

## **Panama**

### **Insurance and Insurance-Related Services**

1. For Panama, Article 12.06(1) applies to the supply of a financial service from the territory of one Party into the territory of the other Party with respect to:

- (a) insurance of risks relating to:
  - (i) maritime shipping and commercial aviation and space launching and freight, including satellites, with this insurance to cover: the goods being transported, the vehicle transporting the goods, or liability deriving from that transport, and
  - (ii) goods in international transit;
- (b) reinsurance and retrocession;
- (c) service auxiliary to insurance, such as consultancy, actuarial, risk assessment, and claim settlement services; and
- (d) insurance intermediation such as brokerage and agency; it is understood that the commitment for cross-border movement of persons is limited to those insurance and insurance-related services indicated in paragraph 1.

2. Paragraph 1(a)(i) does not apply to insurance of risk relating to commercial aviation until two years after the date of entry into force of this Agreement.

### **Banking and Other Financial Services (excluding insurance)**

3. For Panama, Article 12.06(1) applies to the supply of a financial service from the territory of one Party into the territory of the other Party with respect to:

- (a) the provision and transfer of financial information and financial data processing and related software by a supplier of another financial service;  
and
- (b) advisory and other auxiliary financial services as described in subparagraph (l) of the definition of “banking and other financial service (excluding insurance)”, but not intermediation as described in that subparagraph.

## **Annex 12.15**

### **Authorities Responsible for Financial Services**

The authority of each Party responsible for financial services is:

- (a) for Canada, the Department of Finance of Canada; and
- (b) for Panama, the Ministry of Trade and Industry in consultation with the Superintendency of Banks, the Superintendency of Insurance and Reinsurance, and the National Securities Commission;

or their respective successors.